

Chapter 2.190

CONFLICT OF INTEREST

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2.190.010 Scope.

This chapter shall apply to all of the city's elected and appointed officers, members of city boards and commissions, full time, part time and seasonal city employees including appointed department directors, members of city task forces and city volunteers (sometimes collectively referred to as "*city personnel*"). This chapter shall not apply to the city's municipal judge when the judge is acting in a judicial capacity.

2.190.020 Purpose.

This chapter is intended to promote the public interest and preserve the confidence the public has in the integrity of city government. It is not intended to deny city personnel of the opportunities to pursue private economic or other personal interests so long as such interests do not interfere with the discharge of their public duties and responsibilities.

2.190.030 Definitions.

As used in this chapter:

A. "*Assist*" means to act, or offer or agree to act, in such a way as to help, represent, aid, advise, furnish information to, or otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice, or assistance to such person or business entity and with the intent to so assist such person or business entity.

B. "*Business entity*" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.

C. "*City personnel*" means all of the city's elected and appointed officers, full time, part time and seasonal city employees including appointed department directors, members of city boards and commissions, members of city task forces, and city volunteers.

D. "*Compensation*" means anything of value, however designated, which is paid, loaned, granted, given, donated or transferred to any person or business entity for or in consideration of personal services, materials, property, or any other interest whatsoever.

E. "*Governmental action*" means any action on the part of the city, including, but not limited to:

1. Any decisions, determination, finding, ruling, or order; and

2. Any grant, payment, award, license, contract, subcontract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act in respect thereto.

F. “*Improper disclosure*” means the disclosure of private, controlled, or protected information to any person who does not have both the right and the need to receive the information.

G. “*Public body*” means the Cottonwood Heights municipal council and any board, commission, or other public group body organized and empowered to make public policy decisions for the city.

H. “*Private, controlled, or protected information*” means information classified as private, controlled, or protected under the “Government Records Access and Management Act,” UTAH CODE ANN. §63-2-101, *et seq.* (“GRAMA”) or other applicable law.

I. “*Substantial interest*” means the ownership, either legally or equitably, by individuals, their spouse, and their minor children, of a ten percent (10%) or greater interest in any other business entity.

2.190.040 Use of office for personal benefit prohibited.

No city personnel shall:

A. Disclose or improperly use private, controlled, or protected information or other confidential information acquired by reason of their official positions or in the course of their official duties in order to further their personal economic interests or to secure special privileges or exemptions for themselves or others;

B. Use or attempt to use their official positions to further their personal economic interests or secure special privileges or exemptions for themselves or others; or

C.

1. Knowingly receive, accept, take, seek or solicit, directly or indirectly, for themselves or others, a gift or an economic

benefit tantamount to a gift that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties or the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken. An “economic benefit tantamount to a gift” includes a loan at an interest rate that is substantially lower than the commercial rate currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

2. Subsection C(1) of this section shall not apply to the following:

(a) Unsolicited gifts not to exceed fifty dollars (\$50.00) in value, such as greeting cards, pens and pencils, t-shirts, or baseball caps;

(b) An award publicly presented in recognition of public services;

(c) Any bona fide loan made in the ordinary course of business;

(d) Political campaign contributions actually used in a political campaign;

(e) Food or a beverage or meal given at a reception or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program;

(f) Receiving food or refreshments, not to exceed fifty dollars (\$50.00) in value, catered or consumed on premises where it was purchased;

(g) Informational material of nominal value;

(h) Tokens to express condolences, congratulations, or sympathy for ill health, such as flowers, plants, or balloons;

(i) Meals, beverages, and free admission at any event sponsored by, or for the benefit of, a bona fide educational, academic, or

charitable organization, and commemorative gifts from such organizations;

(j) Food, beverages, and free admission provided by a governmental agency or provided to the public at large, for ceremonial functions commemorating the groundbreaking, opening, or naming of a governmental facility;

(k) Training, including food and refreshments, furnished to attendees as an integral part of the training, if the training is in the interest of the city; or

(l) Holiday gifts not to exceed fifty dollars (\$50.00) in value.

D. Use city property and resources for non-city or personal use. This includes, but is not limited to, computers and other office equipment; tools and building materials; city services; city rooms and buildings; and any other facility, property, or resource having a value. Under no circumstances may city personnel conduct any form or part of a private business in city facilities or using city resources. Incidental and *de minimus* personal use of telephones, computers and other office equipment, where such use does not interfere with city activities, is permitted.

2.190.050 Participation in governmental action.

A. No city personnel shall participate in any governmental action which may result in a private benefit. The private benefit may be direct or indirect, create a material personal gain or provide an advantage to family or friends or groups and associations which hold some share of the person's loyalty. However, mere membership itself in a group or organization shall not be considered a conflict of interest as to governmental action concerning such group or association unless a reasonable person would conclude that such membership would prevent an objective consideration of the matter.

B.

1. Prior to any vote on a governmental action, city personnel experiencing, in their opinion, a conflict of interest, should declare their interests publicly and provide a written statement, for the record, preferably before the vote on the governmental action (or, if impractical, as soon as reasonably practical after the vote), specifying the nature of the conflict of interest. If the city personnel determines, in their opinion, that because of a conflict of interest they cannot be objective in their consideration and vote on the governmental action, they shall abstain from considering, debating or voting on the governmental action and they should not discuss the merits of the matter privately with any other city personnel involved in the same governmental action.

2. City personnel who have questions as to whether a conflict of interest exists should raise the matter with the other city personnel involved in the same governmental action and the city attorney.

2.190.060 Compensation for assistance in city contracts; Required disclosure.

A. City personnel who are members of a public body shall not receive or agree to receive compensation for assisting any person or business entity in any transaction involving the city in which they are officers or employees unless they file with the mayor a sworn statement giving the information required by subsection D of this section, and disclose in open meeting to the members of the public body of which they are members immediately prior to the discussion the information required by subsection D of this section.

B. City personnel who are not members of a public body shall not receive or agree to receive compensation for assisting any person or business entity in any transaction involving the city unless they file with the

mayor a sworn statement giving the information required by subsection D of this section and disclose the information required by subsection D of this section to their immediate supervisor and any other city personnel who may rely upon the representations in evaluating or approving the transaction.

C. The statement required to be filed by subsection D of this section shall be filed ten (10) days prior to the date of any agreement between the city personnel and the person or business entity being assisted or ten (10) days prior to the receipt of compensation by the business entity, whichever is earlier. The statement is public information and shall be available for examination by the public.

D. The statement and disclosure shall contain the following information:

1. The name and address of the city personnel;
2. The name and address of the person or business entity being or to be assisted or in which the city personnel has a substantial interest; and
3. A brief description of the transaction as to which service is rendered or is to be rendered and the nature of the service performed or to be performed.

2.190.070 Interest in business regulated by city; Required disclosure.

City personnel who are elected or appointed to a public body and are officers, directors, agents or employees, or the owners of a substantial interest, in any business entity which is subject to the regulation of the city shall disclose the position held and the nature and value of their interests upon first becoming elected or appointed and again during January of each year if their position in the business entity has changed or if the value of their interest in the entity has increased since the last disclosure. The disclosure shall be made in a sworn statement filed with the mayor. The

mayor shall report the substance of all such disclosure statements to the city council, or may provide to the city council copies of the disclosure statement within thirty (30) days after the statement is received by the mayor. This section does not apply to instances where the value of the interest does not exceed two thousand dollars (\$2,000.00). Life insurance policies and annuities shall not be considered in determining the value of any such interest.

2.190.080 Interest in business doing business with city; Required disclosure.

City personnel who are officers, directors, agents or employees, or owners of a substantial interest, in any business entity which does or anticipates doing business with the city and are members of any public body, shall publicly disclose to the members of the public body of which they are members, immediately prior to any discussion by such public body of matters relating to such business entity, the nature of their interest in that business entity. The disclosure statement shall be entered in the minutes of the meeting of the public body.

2.190.090 Investment creating conflict of interest; Required disclosure.

Any personal interest or investment by any city personnel who are members of a public body which creates a conflict between their personal interests and their public duties shall be disclosed in open meetings to the members of the public body in the manner required by section 2.190.080 of this chapter.

2.190.100 Inducement to violate prohibited.

No person shall induce or seek to induce any city personnel to violate any of the provisions of this chapter.

**2.190.110 Complaint charging violation;
Hearing procedure.**

A. Complaints charging violations of this chapter (1) by a member of the city's administrative staff (other than the city manager) shall be received, investigated and heard by the city manager; (2) by the city manager or by a member of the city's governing body (other than the mayor) shall be received, investigated and heard by the mayor; and (3) by the mayor shall be received, investigated and heard by the mayor pro tempore (or, if none, by another member of the city's governing body (other than the mayor) appointed by majority vote

B. If the facts contained in the complaint and those discovered during the investigation are sufficient to conclude that a city personnel has violated this chapter, the city manager, mayor or mayor pro tempore, as appropriate, shall convene a hearing and provide notice of such hearing to the city personnel in question.

C. Following the hearing, and within a reasonable time, the city manager, mayor or mayor pro tempore, as appropriate, shall issue written findings of fact and shall formally announce that:

1. Based upon the facts presented, the city personnel under investigation has violated no provisions of this chapter; or

2. Based upon the facts presented, the city personnel under investigation has violated this chapter and is subject to disciplinary action including termination from employment or removal from the applicable public body subject to processes and procedures provided in city policy.

D. The written findings of fact and recommendations of the city manager, mayor or mayor pro tempore, as appropriate, shall be filed with the city's governing body, which, upon finding a violation of this chapter, may dismiss, suspend or take other appropriate action with respect to the violator. Any such action by the city's

governing body against a city employee shall not be subject to appeal to the city's employee appeal board.

E. Imposition of criminal sanctions, and dismissal or suspension from office of any elected officer, based on a violation of this chapter, may be effected only by a court of competent jurisdiction.

2.190.120 Appeals from decision.

Any city personnel terminated or removed pursuant to section 2.190.110 of this chapter in accordance with city processes and procedures are entitled to a plenary hearing before a court of competent jurisdiction filed within 30 days after written issuance of the city manager's decision.

2.190.130 Penalties.

In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violates this chapter shall be dismissed from employment or removed from office and, except for violations of sections 2.190.070 through 2.190.100, inclusive, is guilty of:

A. A felony in the second degree, if the total amount at issue exceeds \$1,000;

B. A felony in the third degree, if:

1. the officer or employee has been twice before convicted of violating the Utah Municipal Officers' and Employees' Ethics Act, UTAH CODE ANN. §10-3-1301, *et seq.*, or

2. the amount at issue exceeds \$250 but does not exceed \$1,000;

C. A class A misdemeanor if the amount at issue exceeds \$100 but does not exceed \$250; or

D. A class B misdemeanor if the amount at issue was \$100 or less.

2.190.140 Rescission of prohibited transaction.

If any transaction is entered into in connection with a violation of the provisions

of this chapter, the city may rescind or void any contract or subcontract entered into pursuant to that transaction without returning any part of the consideration received by the city.